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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 665

[Docket No. 130708597-3999-01]

RIN 0648-BD46

Western Pacific Pelagic Fisheries; U.S. Territorial Catch and Fishing Effort Limits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; proposed specifications; request for comments.

SUMMARY: NMFS seeks public comment on two proposed actions.

First, NMFS proposes to establish a management framework for specifying catch and fishing effort limits and accountability measures for pelagic fisheries in the U.S. Pacific territories (American Samoa, Guam, and the Northern Mariana Islands). The framework would authorize the government of each territory to allocate a portion of its catch or fishing effort limit to a U.S. fishing vessel or vessels through a specified fishing agreement, and establish the criteria that an agreement would need to satisfy. The proposed framework also includes accountability measures for adhering to catch and fishing effort limits to ensure sustainability.

Second, NMFS proposes an annual limit of 2,000 metric tons (mt) of longline-caught bigeye tuna for each territory, using the framework described in the proposed rule. NMFS would allow a territory to allocate up to 1,000 mt of the 2,000 mt each year to a U.S. longline fishing vessel or vessels in a specified fishing agreement that meets the established criteria. NMFS would monitor, attribute, and restrict catches of longline-caught bigeye tuna, including catches made under a specified fishing agreement, using the procedures and accountability measures described in the proposed rule. The longline bigeye tuna catch limit specifications would be effective in 2014.

NMFS also proposes to make technical administrative changes to certain international fisheries requirements under the Western and Central Pacific Fisheries Convention Implementation Act, to make them consistent with this proposed rule.

NMFS intends the proposed rule and specifications to implement Section 113 of the Consolidated and Further Continuing Appropriation Act of 2012, consistent with the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: In order to be considered, NMFS must receive any comments on the proposed rule and proposed specifications by [insert date 45 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule and proposed specifications, identified by NOAA-NMFS-2012-0178, by either of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0178, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- Mail: Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous), and will accept attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats only.

The proposed rule and proposed specifications would implement Amendment 7 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FEP). Amendment 7, which includes an environmental assessment and regulatory impact review, provides background information on the proposed rule and proposed specifications and is available from www.regulations.gov or the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, www.wpcouncil.org.

You may submit written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Michael D. Tosatto (see ADDRESSES) and by e-mail to OIRA_Submission@omb.eop.gov or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Adam Bailey, NMFS PIR Sustainable Fisheries Division, 808-944-2248.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the pelagic fisheries of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), and Hawaii under the Pelagics FEP. Typically, the Council recommends conservation and management measures for NMFS to implement under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Certain pelagic fish stocks, including tunas, are also subject to conservation and management measures

cooperatively agreed to by the Western and Central Pacific Fisheries Commission (WCPFC), an international regional fisheries management organization that has jurisdiction over fisheries harvesting highly migratory species in the western and central Pacific Ocean (WCPO, generally west of 150° W. longitude). Although NMFS often implements these decisions directly under the authority of the Western and Central Pacific Fisheries Convention Implementation Act, the Council may also recommend conservation and management measures applicable to the U.S. component of internationally-managed fisheries for implementation by NMFS under the Magnuson-Stevens Act.

In 2008, the WCPFC adopted Conservation and Management Measure (CMM) 2008-01 "Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean." CMM 2008-01 established an annual bigeye tuna catch limit for U.S. longline fisheries operating in the WCPO, and separate longline bigeye tuna catch limits for the U.S. participating territories to the WCPFC, which are American Samoa, Guam, and the CNMI. The U.S. bigeye tuna limit was 3,763 mt, which NMFS implemented in 2009, 2010 and 2011 (December 7, 2009, 74 FR 63999). This limit applied only to Hawaii- and U.S. West Coast-based longline fisheries that fished in the WCPO; the limit did not apply to longline fisheries of the U.S. participating territories. CMM 2008-01 also provided that WCPFC

members and Participating Territories of the WCPFC that caught less than 2,000 mt of bigeye tuna in 2004 would be subject to an annual limit of 2,000 mt, except that Small Island Developing States and Participating Territories of the WCPFC undertaking responsible development of their fisheries would not be subject to individual annual limits for bigeye tuna. The three U.S. participating territories fell into this category.

The WCPFC extended the U.S. bigeye tuna limit for 2012 through CMM 2011-01 (August 27, 2012, 77 FR 51709), and for fishing year 2013 through CMM 2012-01 (September 23, 2013, 78 FR 58240). In addition, under CMM 2012-01, Small Island Developing States and Participating Territories of the WCPFC, including American Samoa, Guam, and the CNMI, were not subject to individual longline limits for bigeye tuna for fishing year 2013. Subsequently, in December 2013, the WCPFC adopted a new tropical tuna conservation and management measure, which maintain the U.S. longline bigeye tuna catch limit of 3,763 mt for 2014, and reduces the limit to 3,554 mt in 2015 and 2016, and to 3,345 mt for 2017. CMM 2013-01 further provides that members that caught less than 2,000 mt of bigeye in 2004 are limited to no more than 2,000 mt in each of 2014, 2015, 2016 and 2017. However, this limit does not apply to Small Island Developing States and Participating Territories of the WCPFC. Consistent with previous WCPFC measures, the U.S. participating

territories are not subject to individual longline limits for bigeye tuna under CMM 2013-01.

There are two Hawaii longline fisheries: the deep-set fishery that targets bigeye tuna, and the shallow-set fishery that targets swordfish, but also retains other pelagic management unit species (MUS), including bigeye tuna. Therefore, the U.S. bigeye tuna limit applies to both fisheries. NMFS monitors the longline catch and, when NMFS projects the fisheries will reach the U.S. bigeye tuna limit, NMFS prohibits the retention, transshipment, or landing of bigeye tuna by Hawaii longline vessels in the WCPO through the remainder of the year. NMFS restricted the fisheries in this way in 2009 and 2010.

In 2011, Congress passed Public Law 112-55, 125 Stat. 552 et seq., the Consolidated and Further Continuing Appropriations Act (CFCAA), 2012. Section 113 of the CFCAA authorized the U.S. participating territories to use, assign, allocate, and manage catch or fishing effort limits agreed to by the WCPFC through fishing agreements with U.S. fishing vessels to support fisheries development in the territories, and directed NMFS to attribute pelagic MUS catches made by such vessels to the U.S. participating territory to which the agreement applies. In 2011, NMFS forecasted that the U.S. bigeye catch limit of 3,763 mt would be reached on November 17, 2011. Under the authority of

Section 113, the government of American Samoa entered into a fishing agreement with certain Hawaii longline fishing vessels for 2011 and 2012. From November 18 through December 31, 2011, NMFS attributed to American Samoa 628 mt of bigeye tuna caught by those vessels. Because of the Section 113 agreement, the U.S. bigeye tuna limit was not reached, and Hawaii longline vessels that were not part of that agreement continued to catch bigeye tuna in the WCPO under the remaining amount of the U.S. bigeye tuna limit.

In 2012, NMFS forecasted that the U.S. bigeye tuna catch limit of 3,763 mt would be reached on November 27, 2012. In accordance with NMFS regulations at 50 CFR 300.224, from November 20, 2012, through December 31, 2012, NMFS attributed to American Samoa 771 mt of bigeye tuna caught by Hawaii longline vessels in the American Samoa fishing agreement. Consequently, the U.S. bigeye tuna limit was not reached, and Hawaii longline vessels that were not part of that agreement continued to catch bigeye tuna in the WCPO under the remaining amount of the U.S. bigeye tuna limit. In both 2011 and 2012, the United States did not exceed its bigeye tuna limit of 3,763 mt, and the amount of bigeye tuna caught by Hawaii-based longline vessels and attributed to American Samoa was less than 1,000 mt each year.

In 2013, Congress extended the Section 113 provisions through Public Law 113-6, 125 Stat. 603, Section 110, the

Department of Commerce Appropriations Act. For 2013, the government of the CNMI entered into a Section 113 agreement with certain Hawaii longline vessels. On December 5, 2013, in accordance with NMFS regulations at 50 CFR 300.224, NMFS began attributing to the CNMI bigeye tuna catches made by vessels identified in the agreement. The attribution is expected to continue through the end of 2013. NMFS does not expect the 2013 U.S. bigeye tuna limit of 3,763 mt to be reached.

Proposed Rule

As provided in Section 113 of the CFCAA, and based on recommendations from the Council, consistent with the Magnuson-Stevens Act, this proposed rule would implement the following:

- Establish a framework consistent with WPCFC conservation and management measures for specifying catch or fishing effort limits and accountability measures for pelagic fisheries in the U.S. participating territories, which are American Samoa, Guam, and the Northern Mariana Islands;
- Authorize each U.S. participating territory to enter into specified fishing agreements with U.S. fishing vessels permitted under the Pelagic FEP, and allocate to those vessels a specified portion of a territory's catch or fishing effort limit, as determined by NMFS and the Council;

- Establish the criteria that specified fishing agreements must satisfy, and the procedures for reviewing agreements; and
- Establish accountability measures for attributing and restricting catch and fishing effort toward specified limits, including catches and fishing effort made by vessels in the agreements.

Under the proposed rule, the Council would review existing and proposed catch or fishing effort limit specifications and the portion available for allocation at least annually to ensure consistency with the Pelagics FEP, Magnuson-Stevens Act, WCPFC decisions, and other applicable laws. Based on this review, at least annually, the Council would recommend to NMFS whether such catch or fishing effort limit specification or the portion available for allocation should be approved for the next fishing year. NMFS would review any Council recommendation and, if determined to be consistent with the Pelagics FEP, Magnuson-Stevens Act, WCPFC decisions and other applicable laws, would approve such recommendation. If NMFS determines that a recommendation is inconsistent with the Pelagics FEP, Magnuson-Stevens Act, WCPFC decisions and other applicable laws, NMFS would disapprove the recommendation and provide the Council with a written explanation of the reasons. If a catch or fishing effort limit specification or allocation limit is disapproved,

or if the Council recommends and NMFS approves no catch or fishing effort limit specification or allocation limit, then no specified fishing agreements would be accepted for the fishing year covered by such action.

Proposed Specifications

In addition to the proposed framework process, NMFS also proposes to apply that process to specify a longline bigeye tuna catch limit of 2,000 mt for each U.S. participating territory. The current WCPFC Conservation and Management Measure for tropical tuna stocks (CMM 2013-01), adopted in December 2013, limits members that harvested less than 2,000 mt of bigeye in 2004 to no more than 2,000 mt for each of the years 2014 through 2017. However, paragraph 7 of CMM 2013-01 does not establish an individual limit on the amount of bigeye tuna that may be harvested annually in the WCPFC Convention Area by Small Island Developing States and Participating Territories of the WCPFC, including American Samoa, Guam, and the CNMI. NMFS and the Council, however, believe it is important that the paragraph 7 exemption not apply to U.S. participating territories, since bigeye tuna is currently subject to overfishing. Therefore, NMFS proposes to establish 2,000-mt limits for the U.S. participating territories. These limits, in conjunction with the 1,000-mt limits that may be allocated under specified fishing agreements

(see below), will help ensure stock sustainability under the proposed action.

NMFS would specify that each U.S. participating territory may allocate up to 1,000 mt of its 2,000-mt bigeye tuna limit to a U.S. longline fishing vessel or vessels based in another U.S. participating territory or Hawaii, and identified in a specified fishing agreement. For U.S. fishing vessels identified in a valid specified fishing agreement that are subject to the U.S. bigeye tuna limit and fishing restrictions set forth in 50 CFR 300 Subpart O, NMFS would attribute catch made by such vessels to the applicable territory. The attribution would begin seven days before the date that NMFS projects the limit to be reached, or upon the effective date of the agreement, whichever is later. The effective date is the date upon which NMFS provides written notice to the authorized official or designated representative that the specified fishing agreement meets the requirements of this rule.

For all other U.S. fishing vessels identified in a valid specified fishing agreement, NMFS would attribute catch made by such vessels to the applicable territory beginning seven days before the date NMFS determines the limit is projected to be reached, or upon the effective date of the agreement, whichever is later. NMFS would monitor and restrict, as appropriate, catches of longline-caught bigeye tuna, including catches made

under a specified fishing agreement, using the accountability measures described in the proposed rule. The longline bigeye tuna catch limit specifications would be effective for the 2014 fishing year, which is scheduled to begin on January 1, 2014.

In addition to seeking public comments on this proposed rule and associated proposed specifications, NMFS is soliciting comments on proposed Amendment 7 to the Pelagics FEP, as stated in the Notice of Availability published on December 30, 2013 (78 FR 79388). NMFS must receive comments on Amendment 7 by February 28, 2014. The Secretary of Commerce will consider public comments on this proposed rule and proposed specifications in the decision to approve, disapprove, or partially approve Amendment 7.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed action is consistent with the Pelagics FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Certification under the Regulatory Flexibility Act

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed action, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule.

In 2011, the U.S. Congress passed Public Law 112-55, 125 Stat. 552 et seq., the Consolidated and Further Continuing Appropriations Act (CFCAA), 2012. Section 113 of the CFCAA allows the U.S. participating territories (i.e., American Samoa, Guam, and the CNMI) of the WCPFC to use, assign, allocate, and manage catch limits of highly migratory fish stocks, or fishing effort limits agreed to by the WCPFC through fishing agreements with fishing vessels of the United States for the purpose of supporting fisheries development in those territories. Section 113 also authorizes NMFS to attribute catches made by such vessels to the U.S. participating territory to which the agreement applies. Section 113, as extended through the end of 2013 by Public Law 113-6, 125 Stat. 603, Section 110, the Department of Commerce Appropriations Act, also directed the Council to amend the Pelagics FEP to implement these provisions under the plan. The proposed action intends to implement Section

113 of the CFCAA through Amendment 7 to the Pelagics FEP, consistent with the Magnuson-Stevens Act.

This proposed action would directly apply to vessels federally permitted under the Pelagics FEP, specifically Hawaii longline limited entry, American Samoa longline limited entry, Western Pacific general longline, Pacific Remote Island Areas (PRIA) troll and handline, and Western Pacific Pelagic squid jig permit holders. As of August 2013, 131 vessels possessed Hawaii longline limited entry permits (out of 164 total permits), 47 possessed American Samoa longline limited entry permits (out of 60 total permits), no vessels held Western Pacific general longline permits, five vessels held Pacific Remote Island Areas (PRIA) troll and handline permits, and one held a Western Pacific pelagic squid jig permit. Among the American Samoa and Hawaii longline vessels with limited entry permits in August 2013, 16 held both American Samoa and Hawaii longline limited entry permits (dual permit holders).

According to landings information provided in the environmental assessment in support of this action and logbook information, Hawaii-based longline vessels landed approximately 25,866,000 lb of pelagic fish valued at \$94,901,000 in 2012 (see Tables 7 and 8 of Amendment 7). These vessels made 1,437 trips, caught 159,787 bigeye tuna, and kept 157,502, along with other pelagic fish. With 129 vessels making either a deep- or shallow-

set trip that year, the ex-vessel value of pelagic fish caught by Hawaii-based longline fisheries averaged about \$736,000 per vessel. In 2012, 25 American Samoa longline vessels turned in logbooks reporting the landing of 255,686 pelagic fish valued at \$9,793,153, of which almost \$7.7 million came from albacore tuna landings. With 25 active longline vessels, the ex-vessel value of pelagic fish caught by the American Samoa longline fishery averaged about \$391,720 per vessel.

With respect to non-longline pelagic fisheries, NMFS requires federal permits only for pelagic troll and handline vessels fishing in the PRIA and squid jig vessels. Assuming average landings of pelagic species by all pelagic troll and handline vessels in the western Pacific reflect landings made by those vessels possessing PRIA troll and handline permits, annual revenues earned from landings of pelagic species are not expected to exceed \$10,000 for a typical vessel. Information on catch or revenue from the one federally permitted squid jig vessel is considered confidential and cannot be publicly reported.

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from \$4.0 to 19.0 million, Shellfish Fishing from \$4.0 to 5.0

million, and Other Marine Fishing from \$4.0 to 7.0 million. Based on available information, NMFS has determined that all vessels federally permitted under Pelagics FEP are small entities under the SBA definition of a small entity, i.e., they are engaged in the business of fish harvesting, are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of \$19 million. Therefore, there would be no disproportionate economic impacts between large and small entities. Furthermore, there would be no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length.

Pursuant to the Regulatory Flexibility Act, NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all vessels subject to this action were considered small entities, and they all would continue to be considered small under the new standards. NMFS does not think that the new size standards affect analyses prepared for this action and solicits public comments on the analyses in light of the new size standards.

Even though this proposed action would apply to a substantial number of vessels, the implementation of this action would not result in significant adverse economic impact to individual vessels. While the proposed framework would potentially apply to any highly migratory species under the

Pelagics FEP that is subject to annual catch or fishing effort limits in the WCPO, in recent years, bigeye tuna has been the only species subject to these limits. Therefore, the discussion on impacts will center on bigeye tuna catch and longline fisheries.

The proposed action would potentially benefit Hawaii-based longline fishery participants, including dual permit holders that possess an American Samoa and Hawaii longline limited entry permit. The benefits to these vessels come through allowing the territorial fishing agreements, similar to those authorized under Section 113, to continue under the Pelagics FEP. In 2011 and 2012, American Samoa entered into a Section 113 agreement with almost all Hawaii longline fishery participants, under a framework that was similar to that proposed here. In both years, NMFS projected that the U.S. bigeye tuna limit of 3,763 mt would be reached in mid to late November. Within seven days of the date that NMFS projected the fishery would reach the U.S. bigeye tuna limit, NMFS began attributing to American Samoa, bigeye tuna catches made by longline vessels identified in the Section 113 agreement. Under regulations at 50 CFR 300 Subpart O, vessels that possess both Hawaii and American Samoa limited entry permits are allowed to land bigeye tuna in Hawaii that was caught outside the U.S. EEZ around Hawaii, after the date that the U.S. bigeye tuna limit is projected to be reached. However,

under the Section 113 agreement with American Samoa, these vessels are also allowed to land bigeye tuna in Hawaii that was caught inside the U.S. EEZ around Hawaii after the projection date. The 2011 and 2012 fishing agreement with American Samoa allowed the Hawaii-based longline fishery to land 628 mt and 771 mt of bigeye tuna, respectively, after the date NMFS projected the U.S. bigeye tuna limit would be reached.

For fishing year 2013, the CNMI entered into a Section 113 agreement with certain Hawaii longline fishery participants. NMFS projected that the U.S. bigeye tuna limit of 3,763 mt would be reached in early December, and on December 5, 2013, began attributing to the CNMI bigeye tuna catches made by vessels identified in the Section 113 agreement. The attribution will continue through the end of December 2013.

Based on catch and fishing effort under the 2011 and 2012 fishing agreement, it is likely that under the proposed action, less than 1,000 mt of bigeye tuna would be harvested by Hawaii vessels identified in a specified fishing agreement for 2014. Providing opportunity to land bigeye tuna in Hawaii in the last quarter of the year when market demand is significant will result in positive economic benefits for fishery participants and net benefits to the nation. In terms of the impacts of reducing the limits of bigeye tuna catch by longline vessels based in the territories from an unlimited amount to 2,000 mt,

this is not likely to adversely affect vessels based in the territories.

Historical catch of bigeye tuna attributed to American Samoa has been less than 2,000 mt, even when including catch by vessels based in American Samoa, catch attributed by U.S. vessels (in 2011 and 2012), and dual permitted vessels. There appears to have been little, if any, catch of bigeye tuna by longline vessels in Guam or CNMI in recent years.

Under the proposed action, longline fisheries managed under the Pelagics FEP are not expected to expand substantially nor change the manner in which they are currently conducted, (i.e., area fished, number of vessels longline fishing, number of trips taken per year, number of hooks set per vessel during a trip, depth of hooks, or deployment techniques in setting longline gear), due to existing operational constraints in the fleet, the limited entry permit programs, and protected species mitigation requirements. The likely scenario under the proposed action is expected to result fishing similar to what occurred in 2011 and 2012 under Section 113 fishing agreements.

The proposed rule does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small entities (as discussed above), organizations or government jurisdictions. There does not appear to be disproportionate economic impacts from the proposed rule based

on home port, gear type, or relative vessel size. The proposed rule also will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities.

For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. The public reporting burden for a specified fishing agreement is estimated to average six hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. NMFS expects to receive up to nine applications for specified fishing agreements each year, for a total maximum reporting burden of 54 hours per year.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of

the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Michael D. Tosatto (see ADDRESSES), and by e-mail to OIRA_Submission@omb.eop.gov or by fax to 202-395-7285.

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 665

Administrative practice and procedure, American Samoa, Commercial fishing, Fisheries, Guam, Hawaii, Northern Mariana Islands, Western and Central Pacific Fisheries Commission.

Dated: December 31, 2013

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 300 and 665 as follows:

PART 300--INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 6901 et seq.

2. In § 300.224, remove paragraph (g) and revise paragraphs (d) and (f)(1)(iv) to read as follows:

§ 300.224 Longline fishing restrictions.

* * * * *

(d) Exception for bigeye tuna caught by vessels included in specified fishing agreements under § 665.819(c) of this title.

Bigeye tuna caught by a vessel that is included in a specified fishing agreement under § 665.819(c) of this title will be attributed to the longline fishery of American Samoa, Guam, or the Northern Mariana Islands, according to the terms of the agreement to the extent the agreement is consistent with § 665.819(c) of this title and other applicable laws, and will not be counted against the limit, provided that:

(1) The start date specified in § 665.819(c)(9)(i) of this title has occurred or passed; and

(2) NMFS has not made a determination under § 665.819(c)(9)(iii) of this title that the catch of bigeye tuna

exceeds the limit allocated to the territory that is a party to the agreement.

* * * * *

(f) * * *

(1) * * *

(iv) Bigeye tuna caught by longline gear may be retained on board, transshipped, and/or landed if they were caught by a vessel that is included in a specified fishing agreement under § 665.819(c) of this title, if the agreement provides for bigeye tuna to be attributed to the longline fishery of American Samoa, Guam, or the Northern Mariana Islands, provided that:

(A) The start date specified in § 665.819(c)(9)(i) of this title has occurred or passed; and

(B) NMFS has not made a determination under § 665.819(c)(9)(iii) of this title that the catch of bigeye tuna exceeds the limit allocated to the territory that is a party to the agreement.

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PART 665--FISHERIES IN THE WESTERN PACIFIC

3. The authority citation for part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

4. In § 665.800, add new definitions of "Effective date," "U.S. participating territory," and "WCPFC" in alphabetical order to read as follows:

§ 665.800 Definitions.

* * * * *

Effective date means the date upon which the Regional Administrator provides written notice to the authorized official or designated representative of the U.S. participating territory that a specified fishing agreement meets the requirements of this section.

* * * * *

U.S. participating territory means a U.S. participating territory to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (including any annexes, amendments, or protocols that are in force, or have come into force, for the United States), and includes American Samoa, Guam, and the Northern Mariana Islands.

* * * * *

WCPFC means the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, including its employees and contractors.

* * * * *

5. In § 665.802, add paragraph (o) to read as follows:

§ 665.802 Prohibitions.

* * * * *

(o) Use a fishing vessel to retain on board, transship, or land pelagic MUS captured by longline gear in the WCPFC Convention Area, as defined in § 300.211 of this title, in violation of any restriction announced in accordance with § 665.819(d) (2) .

* * * * *

6. Add § 665.819 to subpart F to read as follows:

§ 665.819 Territorial catch and fishing effort limits.

(a) General. (1) Notwithstanding § 665.4, if the WCPFC agrees to a catch or fishing effort limit for a stock of western Pacific pelagic MUS that is applicable to a U.S. participating territory, the Regional Administrator may specify an annual or multi-year catch or fishing effort limit for a U.S. participating territory, as recommended by the Council, not to exceed the WCPFC adopted limit. The Regional Administrator may authorize such U.S. participating territory to allocate a portion, as recommended by the Council, of the specified catch or fishing effort limit to a fishing vessel or vessels holding a valid permit issued under § 665.801 through a specified fishing agreement pursuant to paragraph (c) of this section.

(2) If the WCPFC does not agree to a catch or fishing effort limit for a stock of western Pacific pelagic MUS

applicable to a U.S. participating territory, the Council may recommend that the Regional Administrator specify such a limit that is consistent with the Pelagics FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws. The Council may also recommend that the Regional Administrator authorize a U.S. participating territory to allocate a portion of a specified catch or fishing effort limit to a fishing vessel or vessels holding valid permits issued under § 665.801 through a specified fishing agreement pursuant to paragraph (c) of this section.

(3) The Council shall review any existing or proposed catch or fishing effort limit specification and portion available for allocation at least annually to ensure consistency with the Pelagics FEP, Magnuson-Stevens Act, WCPFC decisions, and other applicable laws. Based on this review, at least annually, the Council shall recommend to the Regional Administrator whether such catch or fishing effort limit specification or portion available for allocation should be approved for the next fishing year.

(4) The Regional Administrator shall review any Council recommendation pursuant to paragraph (a) of this section and, if determined to be consistent with the Pelagics FEP, Magnuson-Stevens Act, WCPFC decisions, and other applicable laws, shall approve such recommendation. If the Regional Administrator

determines that a recommendation is inconsistent with the Pelagics FEP, Magnuson-Stevens Act, WCPFC decisions and other applicable laws, the Regional Administrator would disapprove the recommendation and provide the Council with a written explanation of the reasons for disapproval. If a catch or fishing effort limit specification or allocation limit is disapproved, or if the Council recommends and NMFS approves no catch or fishing effort limit specification or allocation limit, no specified fishing agreements as described in paragraph (c) of this section will be accepted for the fishing year covered by such action.

(b) Procedures and timing. (1) After receiving a Council recommendation for a catch or fishing effort limit specification, or portion available for allocation, the Regional Administrator will evaluate the recommendation for consistency with the Pelagics FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

(2) The Regional Administrator will publish in the Federal Register a notice and request for public comment of the proposed catch or fishing effort limit specification and any portion of the limit that may be allocated to a fishing vessel or vessels holding a valid permit issued under § 665.801.

(3) The Regional Administrator will publish in the Federal Register, and will use other reasonable methods to notify permit

holders, a notice of the final catch or fishing effort limit specification and portion of the limit that may be allocated to a fishing vessel or vessels holding valid permits issued under § 665.801. The final specification of a catch or fishing effort limit will also announce the deadline for submitting a specified fishing agreement for review as described in paragraph (c) of this section. The deadline will be no earlier than 30 days after the publication date of the Federal Register notice that specifies the final catch or fishing effort limit and the portion of the limit that may be allocated through a specified fishing agreement.

(c) Specified fishing agreements. A specified fishing agreement means an agreement between a U.S. participating territory and the owner or a designated representative of a fishing vessel or vessels holding a valid permit issued under § 665.801 of this part. An agreement provides access to an identified portion of a catch or fishing effort limit and may not exceed the amount specified for the territory and made available for allocation pursuant to paragraph (a) of this section. The identified portion of a catch or fishing effort limit in an agreement must account for recent and anticipated harvest on the stock or stock complex or fishing effort, and any other valid agreements with the territory during the same year

not to exceed the territory's catch or fishing effort limit or allocation limit.

(1) An authorized official or designated representative of a U.S. participating territory may submit a complete specified fishing agreement to the Council for review. A complete specified fishing agreement must meet the following requirements:

(i) Identify the vessel(s) to which the fishing agreement applies, along with documentation that such vessel(s) possesses a valid permit issued under § 665.801;

(ii) Identify the amount of western Pacific pelagic MUS to which the fishing agreement applies, if applicable;

(iii) Identify the amount of fishing effort to which the fishing agreement applies, if applicable;

(iv) Be signed by an authorized official of the applicable U.S. participating territory, or designated representative;

(v) Be signed by each vessel owner or designated representative; and

(vi) Satisfy either paragraph (c)(1)(vi)(A) or (B) of this section:

(A) Require the identified vessels to land or offload catch in the ports of the U.S. participating territory to which the fishing agreement applies; or

(B) Specify the amount of monetary contributions that each vessel owner in the agreement, or his or her designated representative, will deposit into the Western Pacific Sustainable Fisheries Fund;

(vii) Be consistent with the Pelagics FEP and implementing regulations, the Magnuson-Stevens Act, and other applicable laws; and

(viii) Shall not confer any right of compensation to any party enforceable against the United States should action under such agreement be prohibited or limited by NMFS pursuant to its authority under Magnuson-Stevens Act, or other applicable laws.

(2) Council review. The Council, through its Executive Director, will review a submitted specified fishing agreement to ensure that it is consistent with paragraph (c)(1) of this section. The Council will advise the authorized official or designated representative of the U.S. participating territory to which the agreement applies of any inconsistency and provide an opportunity to modify the agreement, as appropriate. The Council will transmit the complete specified fishing agreement to the Regional Administrator for review.

(3) Agency review. (i) Upon receipt of a specified fishing agreement from the Council, the Regional Administrator will consider such agreement for consistency with paragraph (c)(1) of

this section, the Pelagics FEP and implementing regulations, the Magnuson-Stevens Act, and other applicable laws.

(ii) Within 30 calendar days of receipt of the fishing agreement from the Council, the Regional Administrator will provide the authorized official or designated representative of the U.S. participating territory to which the agreement applies with written notice of whether the agreement meets the requirements of this section. The Regional Administrator will reject an agreement for any of the following reasons:

(A) The agreement fails to meet the criteria specified in this subpart;

(B) The applicant has failed to disclose material information;

(C) The applicant has made a material false statement related to the specified fishing agreement;

(D) The agreement is inconsistent with the Pelagics FEP, implementing regulations, the Magnuson-Stevens Act, or other applicable laws; or

(E) The agreement includes a vessel identified in another valid specified fishing agreement.

(iii) The Regional Administrator, in consultation with the Council, may recommend that specified fishing agreements include such additional terms and conditions as are necessary to ensure

consistency with the Pelagics FEP and implementing regulations, the Magnuson-Stevens Act, and other applicable laws.

(iv) The U.S. participating territory must notify NMFS and the Council in writing of any changes in the identity of fishing vessels to which the specified fishing agreement applies within 72 hours of the change.

(v) Upon written notice that a specified fishing agreement fails to meet the requirements of this section, the Regional Administrator may provide the U.S. participating territory an opportunity to modify the fishing agreement within the time period prescribed in the notice. Such opportunity to modify the agreement may not exceed 30 days following the date of written notice. The U.S. participating territory may resubmit the agreement according to paragraph (c)(1) of this section.

(vi) The absence of the Regional Administrator's written notice within the time period specified in paragraph (c)(3)(ii) of this section or, if applicable, within the extended time period specified in paragraph (c)(3)(v) of this section shall operate as the Regional Administrator's finding that the fishing agreement meets the requirements of this section.

(4) Transfer. Specified fishing agreements authorized under this section are not transferable or assignable, except as allowed pursuant to paragraph (c)(3)(iv) of this section.

(5) A vessel shall not be identified in more than one valid specified fishing agreement at a time.

(6) Revocation and suspension. The Regional Administrator, in consultation with the Council, may at any time revoke or suspend attribution under a specified fishing agreement upon the determination that either: operation under the agreement would violate the requirements of the Pelagics FEP or implementing regulations, the Magnuson-Stevens Act, or other applicable laws; or the U.S. participating territory fails to notify NMFS and the Council in writing of any changes in the identity of fishing vessels to which the specified fishing agreement applies within 72 hours of the change.

(7) Cancellation. The U.S. participating territory and the vessel owner(s), or designated representative(s), that are party to a specified fishing agreement must notify the Regional Administrator in writing within 72 hours after an agreement is cancelled or no longer valid. A valid notice of cancellation shall require the signatures of both parties to the agreement. All catch or fishing effort attributions under the agreement shall cease upon the written date of a valid notice of cancellation.

(8) Appeals. An authorized official or designated representative of a U.S. participating territory may appeal the granting, denial, conditioning, or suspension of a specified

fishing agreement affecting their interests to the Regional Administrator in accordance with the permit appeals procedures set forth in 665.801(o) of this subpart.

(9) Catch or fishing effort attribution procedures.__ (i)

For vessels identified in a valid specified fishing agreement that are subject to the U.S. bigeye tuna limit and fishing restrictions set forth in 50 CFR part 300, subpart O, NMFS will attribute catch made by such vessels to the applicable U.S. participating territory starting seven days before the date NMFS projects the annual U.S. bigeye tuna limit to be reached, or upon the effective date of the agreement, whichever is later.

(ii) For U.S. fishing vessels identified in a valid specified fishing agreement that are subject to catch or fishing effort limits and fishing restrictions set forth in this subpart, NMFS will attribute catch or fishing effort to the applicable U.S. participating territory starting seven days before the date NMFS projects the limit to be reached, or upon the effective date of the agreement, whichever is later.

(iii) If NMFS determines catch or fishing effort made by fishing vessels identified in a specified fishing agreement exceeds the allocated limit, NMFS will attribute any overage of the limit back to the U.S. or Pacific island fishery to which the vessel(s) is registered and permitted in accordance with the

regulations set forth in 50 CFR part 300, subpart O and other applicable laws.

(d) Accountability measures. (1) NMFS will monitor catch and fishing effort with respect to any territorial catch or fishing effort limit, including the amount of a limit allocated to vessels identified in a valid specified fishing agreement, using data submitted in logbooks and other information. When NMFS projects a territorial catch or fishing effort limit or allocated limit to be reached, the Regional Administrator shall publish notification to that effect in the Federal Register at least seven days before the limit will be reached and shall use other reasonable means to notify permit holders.

(2) The notice will include an advisement that fishing for the applicable pelagic MUS stock or stock complex, or fishing effort, will be restricted on a specific date. The restriction may include, but is not limited to, a prohibition on retention, closure of a fishery, closure of specific areas, or other catch or fishing effort restrictions. The restriction will remain in effect until the end of the fishing year.

(e) Disbursement of contributions from the Sustainable Fisheries Fund. (1) NMFS shall make available to the Western Pacific Fishery Management Council monetary contributions, made to the Fund pursuant to a specified fishing agreement, in the following order of priority:

(i) Project(s) identified in an approved Marine Conservation Plan (16 U.S.C. 1824) of a U.S. participating territory that is a party to a valid specified fishing agreement, pursuant to § 665.819(c); and

(ii) In the case of two or more valid specified fishing agreements in a fishing year, the projects listed in an approved Marine Conservation Plan applicable to the territory with the earliest valid agreement will be funded first.

(2) At least seven calendar days prior to the disbursement of any funds, the Council shall provide in writing to NMFS a list identifying the order of priority of the projects in an approved Marine Conservation Plan that are to be funded. The Council may thereafter revise this list.

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